

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601



February 27, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased. This report was prepared by the Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased, pursuant to G.S. 120-30.17(1).

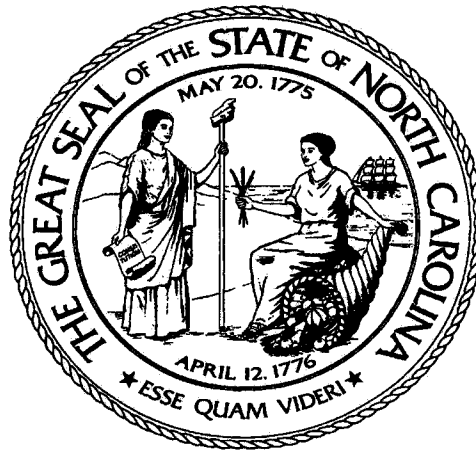

Representative Julia C. Howard

Chair
Committee on Orderly and Expeditious Removal by
Landlord of Personal Property of Deceased
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

**ORDERLY AND EXPEDITIOUS REMOVAL BY
LANDLORD OF PERSONAL PROPERTY OF
DECEASED COMMITTEE**

NORTH CAROLINA GENERAL ASSEMBLY



**REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA**

*Orderly and Expeditious Removal by Landlord
Of Personal Property of Deceased*

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*Orderly and Expeditious Removal by Landlord
Of Personal Property of Deceased*

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OF DECEASED COMMITTEE.

TRANSMITTAL LETTER

May 16, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate

Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives

Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

Preface

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of **Orderly and Expeditious Removal by Landlord of Personal Property of Deceased**, under authority of G.S. 120-30.17(1). The authorization provides that the Committee may recommend changes to the General Statutes to provide for the orderly and expeditious removal by a landlord of the personal property of a deceased tenant where the heirs are not readily identifiable or available to take possession of that personal property. The letter of authorization from the Speaker of the House of Representatives, Thom Tillis, is included in Appendix A of this Report. The Committee was chaired by **Representative Julia C. Howard**. The full membership of the Committee is listed in Appendix B. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased met 3 times after the 2011 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The Committee held its initial meeting on November 17, 2011. Representative Julia Howard welcomed members of the Committee and visitors. Committee Staff reviewed the charge to the Committee and outlined the budget for the Committee's work.

The first presenter was Mr. William Brownlee of the North Carolina Apartment Association. Mr. Brownlee outlined the problems faced by landlords regarding the disposition of a tenant's property where a tenant had died without readily identifiable next of kin or persons available or qualified to open an estate. Existing statutes do not address this situation. As a result, it may take months before a landlord is able to remove the deceased tenant's personal property from the dwelling unit and put the unit back on the market. Mr. Greg Roney, Committee Counsel, offered some potential solutions to the issues presented. The Committee had an extensive discussion of the issue. Comments were also received from Ms. Elinor Foy with Wyrick, Robbins, Yates, and Ponton, and member of the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association and Ms. Kim Crouch, Director of Governmental Affairs, North Carolina Bar Association. Representative Howard asked that Ms. Foy and Ms. Crouch work with the North Carolina Apartment Association and Committee Staff to draft legislation to provide landlords with a statutory procedure for expediting the removal and storage of a deceased tenant's personal property.

At the second meeting, January 19, 2012, Gayle Moses, Committee Counsel, presented the proposed legislation that resulted from the discussions of the stakeholders. The draft set forth a procedure allowing a landlord to take possession of and remove the personal property from a dwelling unit upon the filing of an affidavit with the Clerk of Superior Court that establishes that ten days have passed since the last paid rental period ended, no person has applied to act as the personal representative for the estate, and no affidavit has been filed regarding the estate under Article 25 of Chapter 28 of the General Statutes (Small Estates). The landlord must store the property for a period of 90 days after which time the property may be sold or delivered to a nonprofit organization. Extensive discussion ensued and a number of amendments were made to the proposed legislation. Mr. Peter E. Powell, Legal Counsel to the North Carolina Administrative Office of the Courts spoke to the Committee about a number of concerns with the proposed legislation and there was extensive Committee discussion. At the conclusion of

the meeting Committee staff was instructed to incorporate several amendments into the proposed legislation and to present the revised draft for approval at its next meeting.

The Committee held its third meeting on February 27, 2012. At the meeting, the Committee considered further amendments to the proposed legislation. The Committee then voted to recommend the amended proposal to the Legislative Research Commission (Legislative Proposal I) and to adopt this report.

FINDINGS AND RECOMMENDATIONS

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The Legislative Study Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased finds that a small number of tenants die in North Carolina without immediate family or others willing to administer a decedent's estate. Landlords, especially commercial landlords renting residential apartment units, do not have a clear and time-efficient statutory procedure to regain possession of a rental unit after the death of the tenant without someone available to administer his or her estate and dispose of the deceased tenant's property.

To implement the above finding, the Legislative Study Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee recommends the adoption of a new estate administration procedure that gives landlords statutory authority to regain possession of a dwelling unit and dispose of the personal property of the deceased tenant as set forth in Appendix C as **Legislative Proposal I:**
A BILL TO BE ENTITLED AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH THE CLERK OF SUPERIOR COURT IN THE COUNTY IN WHICH THE RESIDENTIAL DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

APPENDIX A

COMMITTEE AUTHORIZATION

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Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

THOM TILLIS
SPEAKER

September 12, 2011

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-1096

Dear Representative Moore:

As you prepare your agenda for the Legislative Research Commission (the "Commission"), pursuant to G.S. 120-30.17, I hereby authorize the Commission to appoint subcommittees to study the following matters during the interim. House appointees to each study committee are also identified. Please restrict each study committee to a maximum of four meetings unless additional meetings are pre-approved by my office.

....

Studies Approved for the House:

....

4. Orderly and Expeditious Removal by Landlord of Personal Property of Deceased

The Committee may recommend changes to the General Statutes to provide for the orderly and expeditious removal by a landlord of the personal property of a deceased tenant where the heirs are not readily identifiable or available to take possession of that personal property.

Chair: Howard

Members: T. Moore, Blust, Hastings, Stevens, Hilton, Randleman

I will look forward to reviewing the Commission's report regarding the study results, as well as any recommended legislation, prior to convening of the 2012 short session. Please let me know if my staff or I may be of assistance.

Thank you for your service.

Best regards,

A handwritten signature in cursive script that reads "Thom Tillis". The signature is written in dark ink and is positioned above the printed name.

Thom Tillis

APPENDIX B

COMMITTEE MEMBERSHIP

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2011-2012

Representative Julia Craven Howard, Chair
Representative John M. Blust
Representative Kelly E. Hastings
Representative Mark K. Hilton
Representative Shirley B. Randleman
Representative Timothy Keith Moore
Representative Sarah S. Stevens

APPENDIX C

LEGISLATIVE PROPOSAL

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

BILL DRAFT 2011-LMfz-123D [v.12] (11/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/27/2012 10:25:29 AM

Short Title: Deceased Tenant/Landlord Remove Property. (Public)

Sponsors: Representative Howard.

Referred to:

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH THE CLERK OF COURT IN THE COUNTY IN WHICH THE RESIDENTIAL DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 28A of the General Statutes is amended by adding a new section to read as follows:

"§ 28A-25-1.2. Removal of tangible personal property by landlord after death of residential tenant.

(a) When a decedent who is the sole occupant of a dwelling unit dies leaving tangible personal property in the dwelling unit, the landlord may take possession of the property upon the filing of an affidavit that complies with the provisions of subsection (b) of this section if all of the following conditions have been met:

- (1) At least 10 days has elapsed from the date the paid rental period for the dwelling unit has expired.
- (2) No personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located.
- (3) No affidavit related to the decedent's estate has been filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1 in the county in which the dwelling unit is located.

(b) The affidavit required by subsection (a) of this section shall be on a form approved by the Administrative Office of the Courts and supplied by the clerk of court. The affidavit shall state all of the following:

- (1) The name and address of the affiant and the fact that the affiant is the lessor of the dwelling unit.
- (2) The name of the decedent and the fact that the decedent was the lessee of the dwelling unit and died leaving tangible personal property in the dwelling unit. The affiant shall attach to the affidavit a copy of the decedent's death certificate.
- (3) The address of the dwelling unit.
- (4) The date of the decedent's death.
- (5) The date the paid rental period expired and the fact that at least 10 days has elapsed since that date.
- (6) The affiant's good faith estimate of the value of the tangible personal property remaining in the dwelling unit. The affiant shall attach to the affidavit an inventory of the property which shall include, at a minimum, the categories of furniture, clothing and accessories, and miscellaneous items.
- (7) That no personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and that no affidavit has been filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1.
- (8) The name of the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant; that the affiant has made a good faith attempt to contact that person to urge that action be taken to administer the decedent's estate; and that either the affiant was unsuccessful in contacting the person or, if contacted, the person has not taken action to administer the decedent's estate. The affiant shall state the efforts made to contact the person identified in the rental application, lease agreement, or other landlord document.

(c) The affidavit shall be filed in the office of the clerk of court in the county in which the dwelling unit is located. The affidavit shall be filed by the clerk upon the landlord's payment of the fee of thirty dollars (\$30.00) and shall be indexed in the index to estates. The landlord shall mail a copy of the affidavit to the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant. If no contact person is identified in the rental application, lease agreement, or other landlord document, the landlord shall cause notice of the filing of the affidavit to be posted at the door of the landlord's primary rental office or the place where the landlord conducts business and at the county courthouse in the area designated by the clerk for the posting of notices.

(d) The filing of an affidavit that complies with the provisions of subsection (b) of this section shall be sufficient to require the transfer of the property remaining in the decedent's dwelling unit to the landlord. Upon the transfer, the landlord may remove the property from the dwelling unit and deliver it for storage to any storage warehouse in the county in which the dwelling unit is located or in an adjoining county if no storage warehouse is located in that county. The landlord may also store the property in the

1 landlord's own storage facility. Notwithstanding any provision of Chapter 42 of the
2 General Statutes, after removing the property from the dwelling unit as provided in this
3 subsection, the landlord shall be in possession of the dwelling unit and may let the unit
4 as the landlord deems fit.

5 (e) If, at least 90 days after the landlord filed the affidavit required by subsection
6 (a) of this section, no personal representative, collector, or receiver has been appointed
7 under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General
8 Statutes in the county in which the dwelling unit is located and no affidavit has been
9 filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the
10 landlord may take any of the following actions related to the decedent's property:

11 (1) Sell the property as provided in subsection (f) of this section.

12 (2) Deliver the property into the custody of a nonprofit organization
13 regularly providing free, or at a nominal price, clothing and household
14 furnishings to people in need for disposition in the normal course of
15 the organization's operations. The organization shall not be liable to
16 anyone for the disposition of the property.

17 (f) If the landlord delivers the property to a nonprofit organization as authorized
18 in subdivision (e)(2) of this section, the landlord shall provide an accounting to the clerk
19 stating the nature of the action and the date on which the action was taken. A landlord
20 who elects to sell the property as authorized in subdivision (e)(1) of this section may do
21 so at a public or private sale. Whether the sale is public or private, the landlord shall, at
22 least seven days prior to the day of sale, give written notice to the clerk and post written
23 notice of the sale in the area designated by the clerk for the posting of notices and at the
24 door of the landlord's primary rental office or the place where the landlord conducts
25 business stating the date, time, and place of the sale, and that any surplus of proceeds
26 from the sale, after payment of unpaid rents, damages, packing and storage fees, filing
27 fees, and sale costs shall be delivered to the clerk. The landlord may apply the proceeds
28 of the sale to the unpaid rents, damages, packing and storage fees, filing fees, and sale
29 costs. Any surplus from the sale shall be paid to the clerk and the landlord shall provide
30 an accounting to the clerk showing the manner in which the proceeds of the sale were
31 applied. The clerk shall administer the funds in the same manner as provided in
32 G.S. 28A-25-6.

33 (g) If, at any time after the landlord files the affidavit required by subsection (a)
34 of this section but before the landlord takes any of the actions authorized in subsection
35 (e) of this section, the landlord is presented with letters of appointment or another
36 document issued by a court indicating that a personal representative, collector, or
37 receiver has been appointed for the decedent's estate or an affidavit filed under the
38 provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord shall deliver the
39 decedent's property to the personal representative, collector, or receiver appointed or to
40 the person who filed the affidavit.

41 (h) Notwithstanding the provisions of subsections (a) through (g) of this section,
42 if the decedent dies leaving tangible personal property of five hundred dollar (\$500.00)
43 value or less in the dwelling unit, the landlord may, without filing an affidavit, deliver
44 the property into the custody of a nonprofit organization regularly providing free, or at a
45 nominal price, clothing and household furnishings to people in need upon that
46 organization agreeing to identify and separately store the property for 30 days and to

1 release the property to a person authorized by law to act on behalf of the decedent at no
2 charge within the 30-day period. Prior to delivering the property to the nonprofit
3 organization, the landlord shall prepare an inventory of the property which shall include,
4 at a minimum, the categories of furniture, clothing and accessories, and miscellaneous
5 items. A landlord electing to act under this subsection shall immediately send a notice
6 by first-class mail containing the name and address of the property recipient and a copy
7 of the inventory to the person identified in the rental application, lease agreement, or
8 other landlord document as the authorized person to contact in the event of the death or
9 emergency of the tenant and shall post the same notice for 30 days or more at the door
10 of the landlord's primary rental office or the place where the landlord conducts business.
11 The notice posted shall not include an inventory of the property. Any nonprofit
12 organization agreeing to receive personal property under this subsection shall not be
13 liable to the decedent's estate for the disposition of the property provided that the
14 property has been separately identified and stored for release to a person authorized by
15 law to act on behalf of the decedent for a period of 30 days.

16 (i) If any lessor, landlord, or agent seizes possession of the decedent's tangible
17 personal property in any manner not in accordance with the provisions of this section,
18 any person authorized by law to act on behalf of the decedent shall be entitled to recover
19 possession of the property or compensation for the value of the property and, in any
20 action brought by any person authorized by law to act on behalf of the decedent, the
21 landlord shall be liable to the decedent's estate for actual damages, but not including
22 punitive damages, treble damages, or damages for emotional distress.

23 (j) The procedure authorized in this section may be used as an alternative to a
24 summary ejectment action under Chapter 42 of the General Statutes. A landlord shall, in
25 his or her discretion, determine whether to proceed under the provisions of this section
26 or under Chapter 42 of the General Statutes. "

27 **SECTION 2.** G.S. 42-25.7 reads as rewritten:

28 **"§ 42-25.7. Distress and distraint not permitted.**

29 It is the public policy of the State of North Carolina that distress and distraint are
30 prohibited and that landlords of residential rental property shall have rights concerning
31 the personal property of their residential tenants only in accordance with
32 G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), ~~or 42-36.2, 42-36.2,~~ or 28A-25-1.2."

33 **SECTION 3.** Article 3 of Chapter 42 of the General Statutes is amended by
34 adding a new section to read as follows:

35 **"§ 42-36.3. Death of residential tenant; landlord may file affidavit to remove**
36 **personal property from the dwelling unit.**

37 Notwithstanding any other provision of this Chapter, when a decedent who is the
38 sole occupant of a dwelling unit dies leaving tangible personal property in the dwelling
39 unit, the landlord may, instead of commencing a summary ejectment action, file an
40 affidavit as provided in G.S. 28A-25-1.2."

41 **SECTION 4.** This act becomes effective October 1, 2012.
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44

